

equity interest (or the equivalent thereof) of more than 10 percent.

(c) An operator meeting the relevant criteria under § 76.905(b)(4), may, at any time, file a petition for a determination of effective competition with the Commission. The petition should set forth information supporting a determination that effective competition exists as defined in § 76.905(d)(4).

(d) Upon filing of a petition described in paragraph (c) of this section with the Commission, the operator filing the petition shall provide a copy of the petition to the local franchise authority. The Commission will issue a public notice of the petition's filing to allow interested parties to respond. The Commission may then issue an order granting or denying the petition. The Commission may issue an order directing one or more persons to produce information relevant to the petition's disposition.

§ 76.1402 CPST rate complaints.

(a) A local franchise authority may file rate complaints with the Commission within 180 days of the effective date of a rate increase on the cable operator's cable programming services tier if within 90 days of that increase the local franchise authority receives more than one subscriber complaint concerning the increase.

(b) Before filing a rate complaint with the Commission, the local franchise authority must first give the cable operator written notice, including a draft FCC Form 329, of the local franchise authority's intent to file the complaint. The local franchise authority must give an operator a minimum of 30 days to file with the local franchise authority the relevant FCC forms that must be filed to justify a rate increase or, where appropriate, certification that the operator is not subject to rate regulation. The operator must file a complete response with the local franchise authority within the time period specified by the local franchise authority. The local franchise authority shall file with the Commission the complaint and the operator's response to the Complaint. If the operator's response to the complaint asserts that the operator is exempt from rate regulation, the operator's response can be

filed with the local franchise authority without filing specific FCC Forms.

§ 76.1403 Small cable operators.

(a) Effective February 8, 1996, a small cable operator is exempt from rate regulation on its cable programming services tier, or on its basic service tier if that tier was the only service tier subject to rate regulation as of December 31, 1994, in any franchise area in which that operator services 50,000 or fewer subscribers.

(b) A small cable operator is an operator who, directly or through an affiliate, serves in the aggregate fewer than 617,000 subscribers in the United States and whose annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.

(c) As used in this section, an operator shall be deemed affiliated with another entity if that entity holds a 20 percent or greater equity interest, passive or active, in the operator or exercises de jure or de facto control over the operator.

(d) *Procedures.* (1) If a small cable operator has only a single tier that is subject to regulation, the operator, at any time, may certify in writing to its local franchise authority that it meets all criteria necessary to qualify as a small operator. Upon request of the local franchising authority, the operator shall identify in writing all of its affiliates that provide cable service, the total subscriber base of itself and each affiliate, and the aggregate gross revenues of its cable and non-cable affiliates. Within 90 days of receiving the original certification, the local franchising authority shall determine whether the operator qualifies for deregulation and shall notify the operator in writing of its decision, although this 90-day period shall be tolled for so long as it takes the operator to respond to a proper request for information by the local franchising authority. If the local franchising authority finds that the operator does not qualify for deregulation, its notice shall state the grounds for that decision. The operator may appeal the local franchising authority's decision to the Commission within 30 days.

(2) Once the operator has certified its eligibility for deregulation on the basic service tier, the local franchising authority shall not prohibit the operator from taking a rate increase and shall not order the operator to make any refunds unless and until the local franchising authority has rejected the certification in a final order that is no longer subject to appeal or that the Commission has affirmed. The operator shall be liable for refunds for revenues gained (beyond revenues that could be gained under regulation) as a result of any rate increase taken during the period in which it claimed to be deregulated, plus interest, in the event the operator is later found not to be deregulated. The one-year limitation on refund liability will not be applicable during that period to ensure that the filing of an invalid small operator certification does not reduce any refund liability that the operator would otherwise incur.

(3) Within 30 days of being served with a local franchising authority's notice that the local franchising authority intends to file a cable programming services tier rate complaint, an operator may certify to the local franchising authority that it meets the criteria for qualification as a small cable operator. This certification shall be filed in accordance with the cable programming services rate complaint procedure set forth in § 76.1402. Absent a cable programming services rate complaint, the operator need not file for small cable operator certification in order to treat its cable programming services tier as deregulated.

(4) If a pending CPST rate complaint was filed with the Commission before April 30, 1996 the operator should file its certification of small cable operator status directly with the Commission within 15 days of that date.

§ 76.1404 Use of cable facilities by local exchange carriers.

For purposes of § 76.505(d)(2), the Commission will determine whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the following procedures:

(a) Within 10 days of final execution of a contract permitting a local ex-

change carrier to use that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end use, the parties shall submit a copy of such contract, along with an explanation of how such contract is reasonably limited in scope and duration, to the Commission for review. The parties shall serve a copy of this submission on the local franchising authority, along with a notice of the local franchising authority's right to file comments with the Commission consistent with § 76.7.

(b) Based on the record before it, the Commission shall determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and duration. In making this determination, the Commission will evaluate whether the proposed joint use of cable facilities promotes competition in both services and facilities, and encourages long-term investment in telecommunications infrastructure.

Subpart S—Open Video Systems

SOURCE: 61 FR 28708, June 5, 1996, unless otherwise noted.

§ 76.1500 Definitions.

(a) *Open video system.* A facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, provided that the Commission has certified that such system complies with this part.

(b) *Open video system operator (operator).* Any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in such open video system, or otherwise controls or is responsible for the management and operation of such an open video system.

(c) *Video programming provider.* Any person or group of persons who has the